In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-849

GARY ROCCO GARRAMONE, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners' sole contention is that Title III of the Omnibus Crime Control and Safe Streets Act of 1968, the wire interception statute, 18 U.S.C. 2510-2520, is unconstitutional.

On November 14, 1973, petitioners Gary Rocco Garramone, Robert J. Lumio, Albert Joseph Catalano, Jr., and Emilio Joseph Tramontina, Jr., were indicted in the United States District Court for the Eastern District of Pennsylvania. Count I charged all petitioners with conspiracy to use interstate telephone connections to carry on a gambling operation, in violation of 18 U.S.C. 371 and 1952. Count II charged Garramone, Tramontina, and Catalano under 18 U.S.C. 1952 with using interstate telephone connections to carry on a gambling operation in violation of state law. A motion to suppress evidence, including evidence gathered through electronic

surveillance, was denied by the district court (374 F. Supp. 256; Pet. App. A, pp. 3a-10a). After a jury-waived trial on stipulated facts and testimony, petitioners were convicted. Garramone was given a suspended sentence, placed on probation for three years, and fined $2,500. Lumio, Tramontina, and Catalano were each given suspended sentences, placed on probation for two years, and fined $1,000 (Pet. App. B). The court of appeals affirmed (Pet. App. A, pp. 1a-2a).

Petitioners' contend that the wire interception statute, Title III of the Omnibus Crime Control and Safe Streets Act of 1968 (18 U.S.C. 2510-2520), is unconstitutional. The statute, however, fully satisfies the requirements of precision of affidavit and warrant required by this Court's decisions in *Berger* v. *New York*, 388 U.S. 41, and *Katz* v. *United States*, 389 U.S. 347. And it has been upheld against identical claims by every court of appeals that has considered the issue. See *United States* v. *Falcone*, 505 F.2d 478 (C.A. 3), certiorari denied, February 24, 1975, No. 74-5619; *United States* v. *Martinez*, 498 F.2d 464 (C.A. 6), certiorari denied, December 9, 1974, No. 74-154; *United States* v. *Ramsey*, 503 F.2d 524 (C.A. 7), certiorari denied, February 18, 1975, No. 74-5517; *United States* v. *Cafero*, 473 F.2d 489, 496 (C.A. 3), certiorari denied, 417 U.S. 918; *United States* v. *Tortorello*, 480 F.2d 764, 771-775 (C.A. 2), certiorari denied, 414 U.S. 866; *United States* v. *Cox*, 462 F.2d 1293, 1302-1304 (C.A. 8), certiorari denied, 417 U.S. 918; *United States* v. *Cox*, 449 F.2d 679, 683-687 (C.A. 10), certiorari denied, 406 U.S. 934; *United States* v. *Giordano*, 469 F.2d 522 (C.A. 4), affirmed on other grounds, 416 U.S. 505; *United States* v. *Robinson*, 468 F.2d 189 (C.A. 5), remanded on other grounds, 472 F.2d 973 (*en banc*).

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

MARCH 1975.